

O

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RATANAK KIM, ) Case No. CV 13-7712 JGB (MRW)  
Petitioner, )  
vs. ) ORDER DISMISSING ACTION  
F. FOULK, Warden, )  
Respondent. )

---

The Court vacates the reference to the magistrate judge and dismisses  
Petitioner's defective state habeas action.

\* \* \*

Petitioner, an inmate at High Desert State Prison, filed a motion requesting  
equitable tolling of the statute of limitations within which to file a habeas corpus  
petition in federal court. He does not have an active case on file in this district.  
Indeed, his filing is apparently an attempt to extend the deadline to file a future  
petition challenging his state court criminal conviction. This procedure does not  
comply with the rules of this Court, so Petitioner's action must be dismissed.

According to the motion, the California Supreme Court affirmed Petitioner's  
criminal conviction in September 2012. Petitioner states that his appellate attorney

1 delayed informing him of this event until July 2013. Petitioner believes that his  
2 time period for filing a habeas action in federal court expires in December 2013.

3 However, it is not clear from Petitioner's filing what his crimes of  
4 conviction were or what constitutional error he wishes to assert on habeas review.  
5 Petitioner has not filed an actual habeas petition, nor has he filed any other  
6 materials with this Court in connection with his case.

7 As a result, Petitioner failed to comply with the Rules Governing Section  
8 2254 Cases in the United States District Courts. Rule 2(d) expressly requires that a  
9 state prisoner commence a habeas action by using a standard form prepared by the  
10 Court. In our district, prisoners must complete Form CV-69. That form provides  
11 the Court with basic information about the petitioner, his conviction, the prior  
12 status of his case in state and federal court, and, most importantly, the federal  
13 constitutional claims he wishes to pursue here.

14 A state prisoner must begin his case by filing a petition for a writ of habeas  
15 corpus. Petitioner's request for an extension to file his federal habeas petition – in  
16 the absence of a properly filed petition – is inadequate and premature. If he files  
17 an action after the statutory deadline, Petitioner may be entitled to request  
18 equitable tolling of the limitations period.<sup>1</sup> However, at this stage, the Court  
19 cannot extend the habeas filing as Petitioner requests.

---

20  
21  
22  
23  
24 <sup>1</sup> The Court observes that a state prisoner generally has a one-year  
25 period after a conviction becomes final to commence an action for federal habeas  
26 review. 28 U.S.C. § 2244. In California, when a prisoner does not seek certiorari  
27 review of a conviction in the U.S. Supreme Court, a prisoner's conviction  
28 generally becomes final 90 days after the state supreme court denies a petition for  
review. Shannon v. Newland, 410 F.3d 1083, 1086 (9th Cir. 2005).

Therefore, this action is DISMISSED without prejudice. For Petitioner's convenience, the Clerk is directed to send him a blank Form CV-69 with a copy of this Order.

IT IS SO ORDERED.



DATED: 10/31/13

---

**HON. JESUS G. BERNAL  
UNITED STATES DISTRICT JUDGE**